

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ABRAXIS BIOSCIENCE, LLC and  
CELGENE CORPORATION,

Plaintiffs,

v.

HBT LABS, INC.,

Defendant.

C.A. No. 1:18-cv-2019-RGA

REDACTED-PUBLIC VERSION

**DECLARATION OF DAVID A. GERASIMOW IN SUPPORT OF DEFENDANT HBT  
LABS, INC.'S MOTION TO DISMISS OR TRANSFER**

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*Attorneys for Defendant HBT Labs, Inc.*

Dated: February 11, 2019

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**DECLARATION OF DAVID A. GERASIMOW IN SUPPORT OF  
DEFENDANT HBT LABS, INC.'S MOTION TO DISMISS OR TRANSFER**

I, David A. Gerasimow, declare under penalty of perjury as follows:

1. I am an adult over the age of 18, and make this Declaration based on my personal knowledge and in support of Defendant HBT Labs, Inc.'s ("HBT") Motion to Dismiss and Transfer, co-filed herewith.

2. I am an attorney at the law firm of Husch Blackwell LLP, and I represent HBT in the above-captioned matter.

3. Attached as **Confidential Exhibit A** is a true and correct copy of excerpts from HBT's November 6, 2018, notice letter to Plaintiff Abraxis BioScience, LLC.

4. Attached as **Exhibit B** is a true and correct copy of a Notice of Voluntary Dismissal filed on February 5, 2019, by Plaintiffs Abraxis BioScience, LLC and Celgene Corporation in the civil action styled *Abraxis BioScience, LLC and Celgene Corporation v. HBT Labs, Inc.*, C.A. No. 2:18-cv-17304-JMV-MF (D.N.J.).

5. Attached as **Exhibit C** is a true and correct copy of an October 9, 2018, email from FDA Orange Book Staff to Don J. Mizerk, outside counsel for HBT.

6. Attached as **Exhibit D** is a true and correct copy of Google Maps directions from

HBT (536 Vanguard Way, Brea, CA 92821) to the Ronald Reagan Federal Building and United States Courthouse (411 West 4th Street, Santa Ana, CA 92701), retrieved February 10, 2019.

7. Attached as **Exhibit E** is a true and correct copy of Google Maps directions from Abraxis (11755 Wilshire Boulevard, Los Angeles, CA 90025) to the First Street U.S. Courthouse (350 W 1st Street, Los Angeles, CA 90012), retrieved February 10, 2019.

8. Attached as **Exhibit F** is a true and correct copy of Google Maps directions from HBT (536 Vanguard Way, Brea, CA 92821) to the First Street U.S. Courthouse (350 W 1st Street, Los Angeles, CA 90012), retrieved February 10, 2019.

9. Attached as **Exhibit G** is a true and correct copy of Google Maps directions from Abraxis (11755 Wilshire Boulevard, Los Angeles, CA 90025) to the Ronald Reagan Federal Building and United States Courthouse (411 West 4th Street, Santa Ana, CA 92701), retrieved February 10, 2019.

10. Attached as **Exhibit H** is a true and correct copy of excerpts of the 2017 Celgene Annual Report, retrieved from [https://s22.q4cdn.com/728481125/files/doc\\_financials/annual/Celgene\\_AR\\_complete\\_PDF\\_041718.pdf](https://s22.q4cdn.com/728481125/files/doc_financials/annual/Celgene_AR_complete_PDF_041718.pdf) on February 10, 2019.

11. Attached as **Exhibit I** is a true and correct copy of Abraxis BioScience's LinkedIn page, retrieved from <https://www.linkedin.com/company/abraxis-bioscience> on February 10, 2019.

12. Attached as **Exhibit J** is a true and correct copy of the listing of Celgene office locations, retrieved from <https://www.celgene.com/global-office-locations/> on February 7, 2019.

13. Attached as **Exhibit K** is a true and correct copy of an article entitled, "Abraxis vet Neil Desai gets Celgene backing for \$23M A round; Two more biotechs set IPO terms," retrieved from <https://endpts.com/abraxis-vet-neil-desai-gets-celgene-backing-for-23m-a-round-two-more->

biotechs-set-ipo-terms/ on February 10, 2019.

14. Attached as **Exhibit L** is a true and correct copy of the biography for Markus Renschler on the Cyteir Therapeutics website, retrieved from <http://cyteir.com/company/markus-reenschler> on February 5, 2019.

15. Attached as **Exhibit M** is a true and correct copy of the Wikipedia entry for Patrick Soon-Shiong, retrieved from [https://en.wikipedia.org/wiki/Patrick\\_Soon-Shiong](https://en.wikipedia.org/wiki/Patrick_Soon-Shiong) on February 5, 2019.

16. Attached as **Exhibit N** is a true and correct copy of the “Board” webpage for Oncotelic Inc., retrieved from <http://oncotelic.com/board/> on February 5, 2019.

17. Attached as **Exhibit O** is a true and correct copy of the biography for Janet Xiao on the Morrison Foerster website, retrieved from <https://www.mofo.com/people/janet-xiao.html> on February 5, 2019.

18. Attached as **Exhibit P** is a true and correct copy of an Office Action, dated June 18, 2009, in connection with U.S. Application No. 12/334,115, retrieved from the U.S. Patent & Trademark Office’s Public Pair website on February 5, 2019.

19. Attached as **Exhibit Q** is a true and correct copy of excerpts from U.S. Publication No. 2004/0047835, retrieved from Google Patents on February 5, 2019.

20. Attached as **Exhibit R** is a true and correct copy of a Reuters article entitled “Celgene to buy Abraxis BioScience for \$2.9 billion,” retrieved from <https://www.reuters.com/article/us-abraxis-takeover-celgene/celgene-to-buy-abraxis-bioscience-for-2-9-billion-idUSTRE65T1Z120100630> on February 10, 2019.

21. Attached as **Confidential Exhibit S** is a true and correct copy of excerpts of the 2018 Hatch-Waxman ANDA Litigation Report provided by Lex Machina under restriction on

redistribution and publication on February 5, 2019.

22. Attached as **Confidential Exhibit T** is a true and correct copy of excerpts of a patent case comparison between this District and the Central District of California provided by Lex Machina under restriction on redistribution and publication on February 5, 2019.

23. Attached as **Confidential Exhibit U** is a true and correct copy of a redline comparison of the label for ABRAXANE® and the proposed label for HBT's NDA Product.

24. Attached as **Confidential Exhibit V** is a true and correct copy of excerpts of HBT's NDA No. 211875.

25. Attached as **Exhibit W** is a screen capture of the webpage titled Drugs@FDA: FDA Approved Drug Products, printed on February 11, 2019 from <https://www.accessdata.fda.gov/scripts/cder/daf/index.cfm>

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 11, 2019

/s/ David A. Gerasimow  
David A. Gerasimow